"3. Costs sustained represent[ing] secretarial work, including translation of letters and documents at the different stages ... mail fees, telexes to Respondent ... estimated roughly at US$450. ..."

and

"... an average extra expense of US$250 a month over the moral and physical injury done to him ... as ... [on account of the contested decision] the Applicant is compelled to live far from his family in Damascus."

Whereas the Applicant filed written observations on 22 April 1993;

Whereas, on 27 June 1994, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 28 June 1994, the Tribunal put a question to the Respondent to which he provided an answer on 30 June 1994;

Whereas, on 5 July 1994, the Applicant submitted additional statements and on 8 July 1994, the Respondent provided his comments thereon;

Whereas, on 13 July 1994, the Applicant submitted a further statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA, on 4 August 1981, as an Administrative Clerk, on a temporary basis, at the Homs/Hama Area Office in the Syrian Arab Republic. He was later given a temporary indefinite appointment as a Welfare Worker at the grade 7, step 1 level, with effect from 1 April 1984.

On 20 June 1991, the Field Relief and Social Services Officer in the Syrian Arab Republic reported that the Applicant had allegedly falsified a prison certificate, in order to entitle a family of a refugees to food rations normally reserved for "special hardship cases". The Applicant initially denied any involvement, but finally admitted that he had falsified the document, claiming to have done so under threat to his life. The Field Relief and Social

Services Officer recommended in his report that the Applicant be demoted to a lower post, as a disciplinary measure.

On 25 June 1991, the Acting Director of UNRWA Affairs in the Syrian Arab Republic asked the Field Administration Officer to convene and chair an ad hoc Board of Enquiry to investigate the circumstances of the falsification of documents. He also instructed the Field Administration Officer to suspend the Applicant without pay until further notice. On the same day, the Field Administration Officer informed the Applicant of the suspension.

In its report dated 29 July 1991, the Board of Enquiry recommended, in part, as follows:

> "...
>
> 8. To prevent a dangerous precedent by allowing refugees to succeed in gaining rations by threat, and to make it clear to all social workers that falsification of documents is not tolerated, severe disciplinary action is recommended. On the other hand, it should be taken into account that [the Applicant] is a timid, fearful man and committed his act under pressure. Whether he is fit to continue as a social worker or [in] another capacity, would have to be determined by his supervisors.
>
> ..."

On 15 August 1991, the Field Administration Officer wrote to the Applicant, advising him that in the light of the findings of the Board of Enquiry "it had been decided to transfer [him] with demotion" from his present post to the post of Clerk "D" at the Area Registration Office in Damascus, or Clerk "C" at the Field Supply and Transport Department, also in Damascus, both posts being at grade 5. The Applicant was asked to advise whether or not he accepted his transfer to one of these posts. The Field Administration Officer added:

> "I have to advise you further that if you should not accept the above transfer, your services shall then be terminated in the interest of the Agency under the provisions of area staff regulation 9.1 and area staff rules 109.1 and 109.9."

On 25 August 1991, the Applicant accepted the transfer to the post of Clerk "C" at the Field Supply and Transport Department. On the same date, the Field Personnel Officer advised the Applicant that the transfer would take effect on 3 September 1991.

On 26 August 1991, the Applicant wrote to the Director of UNRWA Affairs for the Syrian Arab Republic requesting a copy of the report of the Board of Enquiry, together with an explanation of the reasons for the disciplinary action imposed upon him.

In a reply dated 7 September 1991, the Director transmitted to the Applicant a copy of the Board of Enquiry's report. He added:

> "Based on the findings of the Enquiry Board and the recommendation of your supervisors, I have decided to transfer you on demotion to a clerical post. Because there was no vacant post in the Central Area to which you could be accommodated, you were transferred to the post of Clerk 'C' at Supply and Transport Department of Damascus."

In a letter dated 15 September 1991, the Applicant requested the Field Director to review the decision to transfer him on demotion for disciplinary reasons. The Applicant admitted having forged documents to support entitlements to "special hardship cases" rations, but contended that he had done so under threat from a violent person. On 28 September 1991, the Field Director informed the Applicant that he had decided to maintain the decision in view of the breach of trust committed by the Applicant.

On 10 October 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 23 April 1992. Its recommendations read as follows:

> "9. Recommendations
>
> (a) The Board unanimously and, after a thorough consideration of all aspects of the case, recommends that the Administration's decision be upheld and the case be dismissed.
>
> (b) However, for humanitarian reasons, the Board wishes to recommend that the Appellant be given a consideration of transfer to Hama in his same present grade and salary whenever a suitable opportunity arises and without

> prejudice to the interests of the Agency, which interests remain paramount."

On 15 May 1992, the Officer-in-Charge, Headquarters, UNRWA, transmitted to the Applicant a copy of the Board report and informed him as follows:

> "... As you can see, the Board has recommended that the Administration's decision be upheld and the case dismissed. I accept these conclusions, and the contested decision will therefore stand.
>
> As for the Board's recommendation that you be transferred to a post in the Homs Area, provided that it is not prejudicial to the interest of the Agency, I understand that the Field Administration has already informed you that it would be done as soon as a suitable post at your current level becomes available."

On 30 July 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was threatened by a professional murderer and thus acted in fear of his life.

2. In the circumstances, the Respondent's decision was arbitrary.

Whereas the Respondent's principal contentions are:

1. The decision to impose a disciplinary measure upon the Applicant was based on objective evidence of misconduct and constituted a valid exercise of the Commissioner-General's discretionary authority.

2. The Applicant's transfer on demotion was made in accordance with the Agency's regulations and rules.

3. The Applicant has failed to demonstrate that the impugned decision was flawed by a mistake of fact, an error of law, a denial of due process or was vitiated by extraneous or prejudicial factors.

The Tribunal, having deliberated from 27 June to 20 July 1994, now pronounces the following judgement:

I. This is a simple case in which the Applicant, a Social Welfare Worker at Homs falsified a "prison certificate under threat or the impression of threat" which would have entitled the family of Mr. Yasin Qudsi to receive rations reserved for "Special hardship cases". Mr. Qudsi was in prison, convicted of manslaughter, when these rations were first allotted to his family. But, even after his release, when he saw the Applicant on or about 23 May 1991, he insisted that his family should continue to receive rations as before, and in fact, received from the Applicant a forged certificate of entitlement to rations.

II. The Applicant first denied and later confessed that he had provided a forged certificate, entitling Mr. Qudsi's family to receive rations, apparently worth $40.00. He was suspended on 25 June 1991. A Board of Enquiry was set up. In its report, dated 29 July 1991, the Board concluded that the Applicant's guilt had been established. In recommending severe disciplinary action, the Board added: "On the other hand it should be taken into account that Mr. Hayek is a timid, fearful man and committed his act under pressure." The Respondent, who had lifted his suspension order with effect from 21 July 1991, demoted the Applicant and transferred him with effect from 3 September 1991, from Homs (his home area) to Damascus - a distance of about 250 kilometers. The Applicant has a large family, with some handicapped children, and aged and sick parents. The family had to be looked after from a distance and with a reduced income. The Respondent was not insensitive to the Applicant's plight and considered the disciplinary measures taken against him "the mildest possible under the circumstances." The Applicant persuaded the JAB to recommend that the Respondent make an effort to transfer him closer to home when a suitable opportunity arose to do so.

III. As a consequence of the JAB recommendation, the Respondent informed the Applicant, on 15 May 1992, that he would be transferred to the Homs area as soon as a suitable post in his current grade became available. In a reply to a question put by the Tribunal, the Respondent stated that with effect from 1 April 1994, the Applicant was transferred "to the post of social worker in the Syrian Field Office Control Area, which is where Homs is located. [The Applicant's] posting is at grade 7, step 12, which was his grade prior to demotion. [The Applicant] is currently working in this post."

IV. This transfer would have settled the problem, except that it took the Respondent nearly two years to effect it. The Applicant complains that the Respondent could have kept his promise to transfer the Applicant back to the Homs area earlier if he had been so inclined. The Tribunal notes that the Respondent has often stated he was fully aware of and sensitive to the Applicant's circumstances. The Tribunal, therefore, finds some substance in the Applicant's complaint, but cannot judge definitively whether the Respondent could, in keeping with the rules, practice and interest of the Agency, have given the promised relief to the Applicant earlier.

V. However, in view of the circumstances - some of them extenuating - in which the Applicant committed and later admitted a serious error, and also, recognizing the sympathy and understanding shown to the Applicant by the Respondent, the Tribunal, nevertheless, considers that for having been obliged to stay away from his home on demotion for nearly three years with consequent hardship, he is entitled to some compensation for the delay which took place in moving him back to the Homs area. The Tribunal assesses this compensation at US$1,000.00.

VI. The Applicant has requested in his pleas "Payment of fees and expenses including the legal counsel's fees." He has also

requested, in his additional pleas "Costs sustained ... including translation of letters and documents ... mail fees, telexes to Respondent, which is estimated roughly at US$450.00" The Tribunal, in keeping with its jurisprudence (Judgement No. 237, Powell (1979)), awards him the sum of US$250.00 only.

VII. In view of the above, the Tribunal orders the Respondent to:

(a) Pay to the Applicant a sum of US$1,000.00.

(b) Pay to the Applicant the sum of US$250.00, as legal expenses.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 20 July 1994

R. Maria VICIEN-MILBURN
Executive Secretary